

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD ROBERT MELNYK,

Plaintiff,

No. C 09-0725 PJH (PR)

v.

ORDER OF TRANSFERCALIFORNIA DIRECTOR OF
CORRECTION; CALIFORNIA DNA
DATA BANK; VICTIMS'
COMPENSATION GOVERNMENT
CLAIMS BOARD, et al.,Defendants.
_____ /

This is a civil rights case brought pro se by a state prisoner. Plaintiff was convicted in the California Superior Court for Orange County of burglary, receiving stolen property, and vehicle theft. See *People v. Melnyk*, 2006 WL 1725611 at *1 (Cal. App. 2006). The conviction was reversed by the California Court of Appeal and remanded with instructions to the trial court to grant plaintiff's motion to suppress. *Id.* at *1. He does not say whether he was retried. When he filed the complaint he was in a prison in Pennsylvania, and currently has an address at "Pyramid Health Care" in Altoona, Pennsylvania.

Plaintiff complains that his DNA was not deleted from the state DNA database when his conviction was reversed, and that his claim (presumably a state tort claim, perhaps based on the failure to delete his DNA information) was denied by defendant Government Claims Board. The state agency defendants cannot be sued in federal court. See *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 237-38 (1985) (11th Amendment bars from the federal courts suits against a state by its own citizens, citizens of another state or citizens or subjects of any foreign state). The claims against them will be dismissed.

1 The only remaining claim is against the Director of the California Department of
2 Corrections and Rehabilitation, who is to be found in the venue of the United States District
3 Court for the Eastern District of California. Venue, therefore, properly lies in that district
4 and not in this one. See 28 U.S.C. § 1391(b).

5 This case is **TRANSFERRED** to the United States District Court for the Eastern
6 District of California. See 28 U.S.C. § 1406(a). In view of the transfer, the court will not
7 rule upon plaintiff's motions.

8 **IT IS SO ORDERED.**

9 Dated: October 19, 2009.



PHYLLIS J. HAMILTON
United States District Judge

United States District Court
For the Northern District of California

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